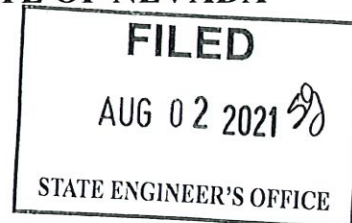


IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 90712  
FILED BY 3PL OPERATING INC.  
ON May 26, 20 21



PROTEST



Comes now Nevada Department of Wildlife

Printed or typed name of protestant

whose post office address is 6980 Sierra Center Parkway, Ste 120, Reno, NV 89511

Street No. or PO Box, City, State and ZIP Code

whose occupation is NA

and protests the granting

of Application Number 90712, filed on May 26, 20 21

by 3PL OPERATING INC. for the

waters of Railroad Valley-Northern Part 173B situated in Nye

an underground source or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

Please see attached.

THEREFORE the Protestant requests that the application be Denied

Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

**Pursuant to NRS 53.045, I hereby certify, under penalty of perjury of the laws of the State of Nevada, that the foregoing is true and correct.**

Signed

Agent or protestant

Chris Crookshanks, Nevada Department of Wildlife

Printed or typed name, if agent

Address

6980 Sierra Center Parkway, Ste 120

Street No. or PO Box

Reno, NV 89511

City, State and ZIP Code

(775) 688-1534

Phone Number

ccrookshanks@ndow.org

E-mail

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**+ \$30 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.  
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.**



## Attachment to Nevada Department of Wildlife Protests of Application Numbers 90712 sequentially through 90751

As the State of Nevada's resource and management experts in the field of wildlife and habitats in the state, it is the Nevada Department of Wildlife's (NDOW) opinion that approval of water rights applications 90712 sequentially through 90751 would be detrimental to the public interest and resources in the geographic location(s) of these applications. The NDOW is formally protesting these application permits on the following grounds:

1. The applications are located on public land within 0.5 to 4.5 miles of the Railroad Valley Wildlife Management Area (Railroad Valley WMA). Whereas Executive Order 6697 (May 2, 1934) established the Railroad Valley Migratory Bird Refuge setting aside 133,396 acres of migratory waterfowl habitat administered by the U.S. Fish and Wildlife Service until 1950. On October 24, 1950, the land was transferred to the Nevada Department of Fish and Game Commission. The NDOW holds eight water right certificates (13998, 13999, 14000, 14001, 14002, 14003, 14004 and 14005) associated with the Railroad Valley WMA for protection of fish and wildlife habitats. A Public Land Order of 1968 reduced the size of the area to 14,720 acres resulting in four separate areas including most waterfowl habitat in Railroad Valley. The Order of 1968 also directed the Bureau of Land Management (BLM) and Nevada Department of Fish and Game (known today as the Nevada Department of Wildlife or "NDOW") to execute a cooperative habitat management agreement. The Railroad Valley WMA is managed under a joint NDOW/BLM Habitat Management Plan (HMP) developed in 1974 and revised in 1990. The Railroad Valley HMP states the WMA is "...managed for, in priority order: Railroad Valley Springfish, waterfowl, and largemouth bass."

The Railroad Valley Springfish (*Crenichthys nevadae*) is a State protected species classified as threatened (NRS 501.105, 501.110, 501.181; NAC 503.065) and is also listed as threatened under the federal Endangered Species Act of 1973, as amended (ESA; 50 CFR). This species is native to and isolated to two groups of thermal springs in Railroad Valley: 1) springs in the vicinity of Lockes Ranch, and 2) springs further north near Duckwater (Campbell and Piller 2017).

Additionally, more than 100 bird species utilize the Railroad Valley WMA as a migration stopover. It is located approximately halfway between the Pahrangat National Wildlife Refuge and the Ruby Lake National Wildlife Refuge and is heavily used by migrating waterfowl. Counts in excess of 10,000 individual ducks and geese have been made during migration surveys.

Waterfowl and shorebirds also nest within the Railroad Valley WMA. Up to 14 species of waterfowl have been observed nesting, as has the Western Snowy Plover (*Charadrius nivosus nivosus*), a migratory shorebird listed as threatened under the ESA (50CFR), is a State Species Of Conservation Priority ("SOCP"; WAPT 2012) and a BLM-Nevada Special Status Species. During times of drought the Western Snowy Plover relies heavily on surface water from artesian wells and springs spilling onto playa habitat.

Lockes Pond offers the only warm water fishery in Nye County. The pond supports largemouth bass and provides sport fishing opportunities.

The subject applications (90712 through 90751) are located on public lands within 7.5 miles of the NDOW Lockes Ranch property. The NDOW acquired Lockes Ranch in 2005 with

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## **Attachment to Nevada Department of Wildlife Protests of Application Numbers 90712 sequentially through 90751**

funding from a Recovery Lands Acquisition Grant for the recovery and protection of the ESA-listed Railroad Valley Springfish. The source pools and/or outflows for three major spring systems containing recovery populations of Railroad Valley Springfish are included on the NDOW Lockes Ranch property. Lockes Ranch comprises approximately 460 acres of spring pools and outflows underscored by NDOW's approximately 5,200 acre-feet of vested water rights and spring sources (02533, 02534, 02535, 02536 and 02537), riparian corridor habitat, wet pasture, and upland habitat.

2. NDOW's Lockes Ranch property and water rights are managed in conjunction with the adjacent Railroad Valley WMA, substantially assisting in management of shorebirds and waterfowl using wetland and pond areas at the Railroad Valley WMA. The property also contains significant habitat values for vulnerable migratory bird species like the ESA-listed threatened Yellow-billed Cuckoo (*Coccyzus americanus*) and small mammals such as Spotted bat (*Euderma maculatum*) listed in Nevada as a State protected, threatened species (NRS 501.105, 501.110, 501.181; NAC 503.030). The Yellow-billed Cuckoo (*Coccyzus americanus*) was recently documented at Lockes Ranch. The western distinct population segment of the yellow-billed cuckoo was listed as threatened under the ESA in 2014 (50 CFR) and is State protected and further classified as sensitive (NRS 501.105, 501.110, 501.181; NAC 503.050) in Nevada. Ten bat species were captured during a bat survey effort at the NDOW Lockes Ranch in 2018, including the rare Spotted bat. We mention this here to underscore the overall tremendous wet habitat values in Railroad Valley that provide valuable foraging and roosting habitat to a host of diverse wildlife.

Lockes pyrg (*Pyrgulopsis lockensis*), a unique species of springsnail, is known to occur only in the spring systems of Lockes Ranch (Hershler and Liu 2017). It is a State SOCP (WAPT 2012). In 2009, Lockes pyrg and 41 other springsnail species occurring in the Great Basin or Mojave Desert ecoregions were petitioned for protection under the ESA, with additional review by USFWS forthcoming. Groundwater development was cited as a common threat to persistence of springsnails and their aquatic habitats.

Historically reported to occur in Railroad Valley is the Western Toad (*Anaxyrus boreas*), a State SOCP (WAPT 2012) and BLM-Nevada Special Status Species. Very recently, taxonomic investigation of the Western Toad species complex using morphometric and genetic analyses resulted in description of two new cryptic species: the Railroad Valley Toad, *Bufo* (= *anaxyrus*) *nevadensis*, and the Hot Creek Toad, *Anaxyrus monfontanus* (Gordon et al. 2020). Regarding the Railroad Valley Toad, the investigators indicate this taxonomic revision replaces previous records of the Western Toad in the Lockes Ranch area (inclusive of the springs and associated wetlands on which the species is dependent). The Hot Creek Toad inhabits the nearby, but separate, Hot Creek watershed.

3. Railroad Valley Tui Chub (*Siphateles bicolor* ssp.) is State protected and further classified as sensitive (NRS 501.105, 501.110, 501.181; NAC 503.067). The species is known to occur in the Butterfield, Kate, and Blue Eagle springs (Williams and Williams 1981) within approximately 3 miles of the applications. Unfortunately, NDOW does not have ready access to these sites for surveying as they occur on private land. However, performing timely conservation actions to prevent their extirpation or improve their status in their native habitats

**Attachment to Nevada Department of Wildlife Protests of  
Application Numbers 90712 sequentially through 90751**

is a high priority to NDOW. Potential conservation actions include establishing a Railroad Valley Tui Chub refugia at the Railroad Valley WMA.

4. Native, aquatic species are critically dependent on reliable groundwater quantity and quality peculiar to Railroad Valley. Proposed brine water extraction (pumping) and reinjection near any of these naturally occurring thermal springs and their dependent wetlands has the potential to disrupt groundwater from irreplaceable consumption or contamination resulting in adverse impacts to spring system function conferring consequences to endemic, isolated, threatened, or endangered populations of aquatic wildlife. Disruptions or alterations of these spring discharges will affect the unique thermal and hydrologic characteristics to which these aquatic species have physiologically adapted over millennia and on which their food base relies. Groundwater contamination and surface water pollution would degrade habitat quality and further imperil these already imperiled species. These impacts can be irreversible to small, isolated populations. Protecting and maintaining groundwater resources and wet habitats within Railroad Valley is a high priority.
5. The proposed brine water extraction associated with these water right applications may not only impact native, aquatic species, it also may negatively impact terrestrial and volant wildlife species that rely on springs and riparian habitats as a water source. Protecting and maintaining groundwater resources and wet habitats within Railroad Valley is a high priority.

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- Gordon, M.R., E.T. Simandle, F.C. Sandmeier, and C.R. Tracy. 2020. Two New Endemic Toads of *Bufo* Discovered in Central Nevada, Western United States (Amphibia: Bufonidae: *Bufo* [*Anaxyrus*]). Copeia 108, No. 1, 2020, 166-183.
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